



Arizona Utility
Investors Association

2100 N. Central, Ste. 210
P.O. Box 34805
Phoenix, AZ 85067
Tel: (602) 257-9200
Fax: (602) 254-4300
Email: swpr@amug.org



0000121051

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED
AZ CORP COMMISSION

MAY 26 4 51 PM '98

DOCUMENT CONTROL

JAMES M. IRVIN
CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

IN THE MATTER OF COMPETITION IN THE)
PROVISION OF ELECTRIC SERVICES)
THROUGHOUT THE STATE OF ARIZONA)

DOCKET NO.
U-00000-94-165

NOTICE OF FILING

The Arizona Utility Investors Association hereby provides notice of filing its comments on the "Statement of Position of the ACC Staff" on various issues related to electric restructuring.

DATED THIS 26TH DAY OF MAY, 1998.


WALTER W. MEEK, PRESIDENT

Original and ten (10) copies of the referenced Comments were filed this 26th day of May, 1998, with:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Copies of the referenced Comments were hand-delivered this 26th day of May, 1998, to:

James M. Irvin, Chairman
Renz D. Jennings, Commissioner
Carl J. Kunasek, Commissioner
Paul M. Bullis, Legal Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Copies of this Notice were mailed this 26th day of May, 1998, to all parties of record in the above-captioned docket.

~~Arizona Corporation Commission~~
DOCKETED

MAY 26 1998

DOCKETED BY





Arizona Utility
Investors Association

2100 N. Central, Ste. 210
P. O. Box 34805
Phoenix, AZ 85067
Tel: (602) 257-9200
Fax: (602) 254-4300
Email: swpr@amug.org

BOARD OF DIRECTORS

Wayne Anderson
*AmeriCare
Phoenix*

Diane Cusack
Scottsdale

Bill Fisher
*Ft. McDowell Gaming Center
Scottsdale*

Judy Gignac
*Bella Vista Ranches
Sierra Vista*

Chris Hamel
*Dain Rauscher
Phoenix*

Dave Iwanski
*Agri-Business Council of AZ
Phoenix*

Anne Kleindienst
*Jennings, Strouss & Salmon
Phoenix*

Sally Kur
*Kur Carr Group
Phoenix*

Albert L. McHenry
*Arizona State University
Tempe*

Robert A. O'Leary
*Water Utilities Assoc. of AZ
Phoenix*

Keith D. Sprinkle
Scottsdale

RECEIVED
AZ CORP COMMISSION

MAY 26 4 51 PM '98

DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

JAMES M. IRVIN
CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

IN THE MATTER OF COMPETITION IN THE)
PROVISION OF ELECTRIC SERVICES)
THROUGHOUT THE STATE OF ARIZONA)

DOCKET NO.
U-00094165

**COMMENTS OF THE ARIZONA UTILITY INVESTORS
ASSOCIATION ON THE STAFF'S STATEMENT OF POSITION
ON ELECTRIC RESTRUCTURING ISSUES**

AUIA has had less than two days to examine and comment on the extensive issues covered in the Staff's position paper. Therefore, we will limit our comments to four subject areas in which we have been previously involved: A. Stranded Cost; B. Affiliate Rules; E. Local Distribution Company Services; and F. Transmission and Dispatch.

In addition to the lack of notice, the difficulty in responding is compounded by the fact that we have had no opportunity to seek explanation or clarification of the provisions. This badly written document omits critical details, raises as many new questions as it tries to answer and is filled with ambiguities. In short, this document is at least as deficient in providing a blueprint for competition as the rule it attempts to amend.

Our comments regarding stranded cost will say that the Staff's new insistence on divestiture is an extraordinarily bad idea. It will not solve the stranded cost issue, but it can destroy the financial integrity Arizona's electric industry.

It will damage utility shareholders and bondholders severely and it will ultimately force Arizona electric consumers to compete with Californians for more expensive energy. If this plan is adopted, it will be the most punitive proposal in the United States for utilities and their investors.

A brief history of the Commission's restructuring exercise is instructive. It discloses five phases of activity to date:

- 1) Beginning in June 1994, a two-year Socratic dialogue on competition between the ACC Staff and various parties, with no timetable or objective on the table;
- 2) Starting in August 1996, a four-month paroxysm of rulemaking with no sworn testimony or evidence, resulting in the competition rule described as a "framework" document, now apparently defunct;
- 3) From February 1997, 12 months and hundreds of hours of Working Group meetings in a failed attempt to produce consensus on the dozens of missing pieces in the rule;
- 4) January - April 1998, participation in weeks of evidentiary hearings on stranded cost issues which now appear to be irrelevant along with the resulting recommended order by the Chief Hearing Officer;
- 5) May 1998, a brand new "staff" concept and timetable for electric restructuring developed in secret and, at least in AUIA's case, with less than 48 hours of notice of its existence.

The point of this chronology is that electric restructuring has lurched down blind alleys, crashed into dead ends and been a constantly moving target for nearly four years. Yet here we are, six months from competition, with another mutation which is vastly different from previous ones. In AUIA's view, this has resulted in a denial of due process. That denial is evidenced in the record on stranded cost.

First, the rule adopted by the Commission in December 1996 stated unequivocally that the Commission would allow recovery of unmitigated stranded cost. Next, Last Sept. 30 the Stranded Cost Working Group report was issued, including a clear statement of principles from the Utilities Division staff which flowed from the stranded cost provision in the rule. Thereafter, a completely different staff position was expressed in sworn testimony filed in evidentiary hearings last February. Then on May 6, we were asked to focus on three options offered by the Chief Hearing Officer in his recommended opinion and order. And now, we have a brand new plan which effectively forces every Affected Utility to sell its power plants.

In fact, it is our information and belief that this latest plan was not even written by the ACC Staff but is the product of a university graduate student who acted as a "consultant" to the Commission.

This is an appalling record of misdirection and disorganization. It would be slapstick comedy if not for the fact that real people will lose part of their life savings and their retirement incomes due to this incredible mismanagement. These are our specific comments:

A. Stranded Cost

The first Commission objective cited by the Staff with regard to stranded cost is to "avoid vertical and horizontal market power."

A laudable objective except that it serves no purpose. The fact is that among the 35 witnesses who testified at the stranded cost hearing, including five who argued for divestiture, not one indicated that there is any evidence that supports a concern about the exercise of market power by Arizona utilities.

The staff's plan asserts that utilities which divest their generating assets would have an opportunity to recover 100 % of unmitigated stranded cost. Affected Utilities are not required to divest, but the plan provides no method or procedure for recovering stranded costs except through divestiture. Therefore, the "voluntary" definition of divestiture is a fiction.

Since market power is not an issue in Arizona, the only purpose for divestiture is to resolve stranded cost in a way that insulates the Commission from the decisions. If adopted, this would be the most punitive regulation in the United States. No other jurisdiction has required divestiture as a condition for recovering stranded cost and as the method for calculating it.

Yet the Staff's proposal will not resolve stranded cost. It will only stretch the problem, damaging utility companies and their investors and eventually forcing electric customers to pay higher prices. It makes no sense in Arizona.

Excluding must-run units, the plants that will sell at or above book value are those with low fixed costs -- the intermediate and base loaded coal plants that are almost fully depreciated. These plants may sell at multiples of book value and still be in the money. They are also the most valuable to Arizona consumers who have already paid those fixed costs.

Just selling those facilities will drive up the cost of their energy output. In addition, the Staff's plan prohibits Affected Utilities from bidding on the assets of any other Affected Utility, guaranteeing that the plants will be divested to foreign or out-of-state interests. And where will the power go?

California will continue to be the highest priced energy market in the country well into the next century. According to the California Energy Commission, that state will have to import several thousand megawatts of new capacity in the next 15 years from the desert southwest. That's where the divested energy will go unless Arizona consumers want to pay the same prices that California residents will pay.

Plants that won't sell at or above book value are those that have higher fixed costs, like Palo Verde and Springerville. They are also the plants with the stranded costs. So the stranded cost problem won't go away. It will stay right here at the Commission's doorstep.

The Staff plan requires Affected Utilities that choose not to divest must transfer their assets to a separate affiliate at a value to be determined by the Commission. There is no explanation for this value determination nor any indication how the substantial legal, regulatory and financing costs associated with such a transfer will be recovered. Based on the approach used in the section on Affiliate Rules, we assume the cost would be dumped on shareholders. If so, this would be unfair and abusive.

For divesting utilities, a transition charge may begin January 1, 1999. According to the plan, revenues would be placed in a trust account and dispersed as generation is divested. However, there is no indication of what will happen if bids fall below acceptable levels or if there are no buyers at all.

Finally, the plan declares that if the divestiture of any generation asset is "not in the public interest," the Commission may provide the Affected Utility with transition revenues "to preserve its financial integrity." This provision is simply incomprehensible.

In our view the entire divestiture proposal is not in the public interest.

B. Affiliate Rules

We will not argue here with the Commission's objectives of separating competitive and monopolistic services to prevent cross-subsidies. But we object strenuously to the Commission's dictating corporate restructuring and assigning the cost arbitrarily to shareholders.

Shareholders will receive no benefit from such restructuring. Customers will receive no benefit from such restructuring; in fact, they will suffer losses due to the restrictions on shared savings. The only beneficiaries of this mandated separation will be new market entrants. The cost of restructuring should be regarded as a stranded cost and recovered in the competitive market.

E. Local Distribution Company Services

This entire section defies any logic that applies to competitive markets. It betrays the fact that the Corporation Commission is actually afraid of competition.

According to the plan, the Affected Utility, acting as a local distribution company (LDC), must offer bundled electric power service (Standard Offer Service) to everyone, forever. Of course, this is a regulated service, which means the Commission Staff never has to leave the womb. It never has to give up control.

It also means that the regulated LDC must remain in competition forever for generation supply with its own affiliates and with every other ESP. Why?

According to the plan, customers can change suppliers and switch to or from Standard Offer Service without constraints at the end of any billing cycle. What happens to seasonal service on Standard Offer, and what prevents customers from gaming the system to evade seasonal premiums?

F. Transmission and Dispatch

If the previous section defies logic, this one invites psychiatric intervention. Here, the Commission's lust for power seeks to envelop federal authority. It is just another example of how sloppy and undisciplined this exercise continues to be.

First, the Staff's plan asserts that Affected Utilities must join an independent system operator (ISO). Hasn't anyone informed the Staff that the interstate transmission system and the formation of ISOs are under the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC)? This Commission has no authority to compel the formation of an ISO. It has no authority to compel a transmission owner to belong to an ISO. It has no authority to dictate how the cost of an ISO will be allocated.

Next, the Staff's plan asserts that until an ISO is formed, Affected Utilities must participate in an independent scheduling administrator (ISA), and it lists seven mandatory functions of the ISA.

In the first place, a number of entities, including AUIA, have been working in good faith to determine whether an ISA is feasible, particularly in terms of cost-effectiveness. Unfortunately, it is possible that the issue of liability may be insurmountable in forming an ISA, but the Commission Staff hasn't a clue where these discussions have progressed.

Furthermore, the mandatory functions listed by the Staff would throw the ISA under FERC jurisdiction and this Commission would have no authority over its formation, operation or membership. Of necessity, a properly functioning ISA would include entities which the Commission does not regulate and its dictates regarding cost allocations would be irrelevant.

This concludes the comments of the Arizona Utility Investors Association.